

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
ST. JOSEPH DIVISION**

DENNIS WEISENBURGER,)
)
)
Plaintiff,)
)
)
v.) No. 16-06001-CV-SJ-RK
)
)
UNITED STATES OF AMERICA,)
)
)
Defendant.)

ORDER

Now before the Court is Defendant's motion to dismiss for failure to comply with Mo. REV. STAT. § 538.225. (Doc. 15.) Plaintiff has not opposed the motion.¹ The Court advised Plaintiff on two occasions that failure to timely respond to Defendant's pending motion may result in the motion being granted without further notice. (Docs. 25, 30.)

Plaintiff filed his Complaint on January 22, 2016, alleging that Defendant provided negligent medical care which resulted in the death of Orville Weisenburger. (Doc. 4.) The applicable Missouri statute provides in relevant part:

In any action against a health care provider for damages for . . . death on account of the rendering of or failure to render health care services, the plaintiff . . . shall file an affidavit with the court stating that [he] has obtained the written opinion of a legally qualified health care provider which states that the defendant health care provider failed to use such care as a reasonably prudent and careful health care provider would have under similar circumstances and that such failure to use such reasonable care directly caused or directly contributed to cause the damages claimed in the petition.

¹ Plaintiff's response was originally due on August 29, 2016, but in lieu of a response, Plaintiff filed a motion for continuance. (Doc. 17.) The Court granted Plaintiff's motion for continuance, extending Plaintiff's deadline to respond to October 11, 2016. (Doc. 20.) Plaintiff did not respond by October 11, 2016, and on October 13, 2016, the Court ordered Plaintiff to show cause for his failure to respond by October 23, 2016. (Doc. 25.) Then, Plaintiff filed an untimely request for extension of time to respond to the Court's show cause order. (Docs. 26, 27.) On November 11, 2016, the Court entered an Order denying Plaintiff's request for an extension of time to respond to the Court's show cause order, but granting Plaintiff an extension of time to respond to Defendant's motion to dismiss by November 24, 2016. (Doc. 30) That deadline has now passed, and Plaintiff has not filed a response.

Such affidavit shall be filed no later than ninety days after the filing of the petition unless the court, for good cause shown, orders that such time be extended for a period of time not to exceed an additional ninety days.

Id.; see also *Hicks v. Denenny*, No. 15-801-CV-W-JTM, 2016 U.S. Dist. LEXIS 62518 (W.D. Mo. May 11, 2016) (dismissing action for failure to comply with Mo. REV. STAT. § 538.225). If the required affidavit is not filed, the Court is directed to dismiss the action without prejudice. *Id.*

Plaintiff did not file the required affidavit nor file a request for extension. Furthermore, the time for doing so has now expired. Accordingly, it is
ORDERED that Defendant's Motion to Dismiss (doc. 15) is GRANTED and this matter is dismissed without prejudice.

s/ Roseann A. Ketchmark
ROSEANN A. KETCHMARK, JUDGE
UNITED STATES DISTRICT COURT

DATED: December 12, 2016